



THE CITY OF SAN DIEGO  
**MANAGER'S REPORT**

DATE ISSUED: May 5, 2004 REPORT NO. 04-095

ATTENTION: Honorable Mayor and City Council  
Docket of May 11, 2004

SUBJECT: HAWLEY RESIDENCE, NEGATIVE DECLARATION NO. 3768,  
PROJECT NO. 3768, COUNCIL DISTRICT 1, PROCESS 3

REFERENCE: Planning Commission Report No. P-03-380

OWNER/  
APPLICANT: Jay and Jan Hawley

SUMMARY

Issues - Should the City Council AFFIRM the Planning Commission's March 11, 2004 adoption of Negative Declaration (ND) No. 3768?

Staff's Recommendation - Deny the appeal and uphold the Environmental Determination [Negative Declaration (ND) No. 3768].

Planning Commission Recommendation – On March 11, 2004, the Planning Commission voted 6 - 1 to adopt Negative Declaration No. 3768.

Community Planning Group Recommendation – Due to internal matters within the La Jolla Community Planning Association, a final recommendation and vote has not been forwarded to the City.

Other Recommendations – On March 9, 2004, the La Jolla Shores Advisory Board voted 7-0 to recommend approval with a condition/recommendation to lower the rear retaining wall approximately three feet in the area of the southwest corner.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has prepared and completed a Negative Declaration, Project No. 3768, covering the Coastal Development Permit No. 6199, Site Development Permit No. 6200, and Neighborhood Development Permit No. 6201.

Fiscal Impact – All costs associated with processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact – None with this action.

Housing Impact Statement - None with this action.

Water Quality Impact Statement - The total amount of runoff from the site would not be altered from existing site conditions. Pollutants generated at the site would be treated either by a filtering device in combination with a natural site feature or by treatment through discharge into vegetation prior to leaving the site. This development would treat site run-off in compliance with the City of San Diego Storm Water Standards regulations effective December 2002. These measures would mitigate any water quality impacts to below a level of significance.

## BACKGROUND

The project site is currently vacant within a previously approved subdivision with established setbacks, know as Hidden Valley Hills, which also has an active Architectural Review Committee and covenants Conditions and Restrictions (CC&Rs). The project site contains sensitive biological resources and is subject to the Environmentally Sensitive Lands regulations. The project site is located at 7403 Hillside Drive, within the SF Zone of the La Jolla Shores Planned District, Coastal Overlay Zone, and Coastal Height Limitation Overlay Zone, within the La Jolla Community Plan Area. The proposed grading and construction all constitute, by definition, Coastal Development, which pursuant to the Land Development Code (Section 126.0702) requires a Coastal Development Permit. A Site Development Permit is required, by the Land Development Code (Sec. 103.0302.3), for the proposed development within the La Jolla Shores Planned District. A Neighborhood Development is required, by the Land Development Code (Section 143.0302), due to the proposed *development* on lands containing *Sensitive Biological Resources* (Environmentally Sensitive Lands Regulations).

After receiving the staff report and testimony from the public, the subject project was approved by the Hearing Officer, October 1, 2003.

### Appeal to Planning Commission

On October 13, 2003, Louis Perry appealed the Hearing Officer's approval of this project with concerns about the height of the structure when viewed from the street, the garage and driveway design and related side yard retaining wall height, noted errors on the plans, that the project will violate the Intent of the La Jolla Shores Planned District, and that the approval of the project will override the recommendations of the La Jolla Community Planning Groups.

After receiving the staff report and testimony from the appellants and interested parties on December 18, 2003, the Planning Commission voted to continue the item in order for the project to go back to the La Jolla Shores Advisory Board and work out a better driveway and garage design with the neighbors. At a continued hearing of the Planning Commission on March 11, 2004, the Planning Commission voted 6-1 to deny the appeal and approved the redesigned project and Certified the Negative Declaration.

### Appeal to City Council

Effective January 1, 2003, Section 21151(c) of the California Public Resources Code regarding the California Environmental Quality (CEQA) has been amended as follows:

*If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

Pursuant to this amended legislation, Louis Perry filed an appeal of the Planning Commission's decision on March 11, 2004. Note that CEQA now allows any interested party to appeal the adoption of an environmental document to the agency's elected decision making body, which in this case is City Council. However, this new appeal process applies only to the environmental document.

Planning Commission's decision regarding an appeal of the October 1, 2003 Hearing Officer Decision to approve the project, the Coastal Development Permit (CDP No. 6199), Site Development Permit (SDP No. 6200), and Neighborhood Development Permit (NDP No. 6201) is not appealable to the City Council.

### DISCUSSION

The project proposes to construct a new two-story single family residence to total approximately 6,426-square-feet of gross floor area, including a 876 square foot attached three car garage, on a 13,038 square foot property. The proposed dwelling unit is sited directly adjacent to and within the previously disturbed portion of the site, based on the project's related Geology Report.

### Appellant's Position

The appellant's position (ATTACHMENT 4) is that the Environmental Document is not adequate, claiming that a Mitigated Negative Declaration should have been prepared and that the Negative Declaration No. 3768 is in error. The appeal claims that the visual quality evaluation, Figure 3a, of the document is in error and that the evaluation did not consider visual impacts of the proposed retaining walls.

City staff investigated the potential for significant impacts related to all aspects of the Hawley Residence project, both during the initial study phase and in response to all communications

from the appellants, and did not find evidence of any significant impacts. Since there are no significant environmental issues at or above a level of significance, based on the City's Significance Determination Guidelines, staff believes that the Negative Declaration prepared for the project is the appropriate document and is in conformance with the requirements of CEQA.

#### CEQA Requirements for Environmental Documents

Pursuant to Section 21080 (c) of the California Public Resources Code regarding CEQA:

*If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:*

- (1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.*
- (2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposal made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.*

#### CEQA Definition of Substantial Evidence

As defined in Section 15384 of the CEQA Guidelines:

*(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.*

*(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.*

Staff's analysis, to determine whether the Hawley Residence project would have a significant effect on the environment, was based on substantial evidence that included facts and documentation based on reasonable assumptions predicated upon facts. Upon completion of the Initial Study, staff determined that no significant impacts would result from the proposed development, no mitigation would be required, and a Negative Declaration was prepared in accordance with CEQA. The project includes proposed rear retaining walls varying in height from 6 feet to 19 feet which are to be extensively landscaped. Under the City's Significance

Determination Guidelines, a retaining wall which is greater than six feet in height and fifty feet in length with **minimal** landscape screening or berming **where the walls would be visible to the public** would be found as a significant impact. In this case while portions of the wall are greater than 6 feet, the wall is extensively landscaped so that the wall is screened by this landscaping. Further, the segments of the retaining wall which are higher than 6 feet are not in the public view. Staff analyzed the revisions, (garage, driveway, and retaining walls) to the project design and determined that these changes would not create new significant impacts nor would trigger identified environmental impacts disclosed in the Negative Declaration to be considered significant.

### CONCLUSION

Staff has exhaustively investigated the issues raised by the public and appellant during project discretionary review, CEQA public review, and hearing processes. Based on substantial evidence in light of the whole record, staff has determined that the Hawley Residence project would not create significant, unmitigated impacts to the environment; minor typographical revisions to Negative Declaration does not affect the analysis or conclusions of the document; and the project has been revised and modified to meet the requirements of applicable regulations of CEQA and the City's Land Development Code

Staff believes that the determination to prepare a Negative Declaration for the project is in conformance with Section 21080(c) of CEQA and therefore recommends affirming the Planning Commission's adoption of the Negative Declaration No. 3768.

### ALTERNATIVE

Grant the appeal, set aside the environmental determination, and remand the matter to the lower decision maker for reconsideration, with any direction or instruction the City Council deems appropriate (Negated Negative Declaration No. 3768).

Respectfully submitted,

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Tina P. Christiansen, A.I.A.  
Development Services Director

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Approved: George I. Loveland  
Assistant City Manager

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Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments:

1. CEQA – New Law
2. Community Plan Land Use Map
3. Project Location Map
4. Full Copy of Appeals
5. Ownership Disclosure Statement